

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 3 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAMES MICHAEL MURPHY, MD,

No. 17-35614

Plaintiff-Appellant,

D.C. No. 3:16-cv-00665-YY

v.

MEMORANDUM*

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Oregon

Michael W. Mosman, Chief Judge, Presiding

Submitted November 7, 2018**
Portland, Oregon

Before: FERNANDEZ and IKUTA, Circuit Judges, and SESSIONS,*** District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable William K. Sessions III, United States District Judge
for the District of Vermont, sitting by designation.

James Michael Murphy appeals the district court's dismissal of his defamation action against his former employer, the United States. We have jurisdiction under 28 U.S.C. § 1291 and we affirm the decision of the district court.

Because Murphy's claims arise under Oregon state law, Oregon claim preclusion law applies. *See Semtek Int'l Inc. v. Lockheed Martin Corp*, 531 U.S. 497, 508 (2001). Under Oregon law, "a subsequent claim is barred by a prior judgment if the earlier litigation proceeded to final judgment, involved the same parties, and concerned a claim arising out of the same transaction or series of related transactions." *Lucas v. Lake Cty.*, 253 Or. App. 39, 53 (2012). In determining whether a set of facts constitutes a single transaction, Oregon relies "on the approach expressed in section 24(2) of the Restatement, which 'giv[es] weight to such considerations as whether the facts are related in time, space, origin, or motivation [and] whether they form a convenient trial unit[.]'" *Id.* at 54 (quoting *Western Systems, Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir.1992), cert. den., 506 U.S. 1050 (1993)). "The doctrine applies to all claims available against a defendant that arose from a particular factual transaction, regardless of whether the plaintiff actually asserted them." *Handam v. Wilsonville Holiday Partners, LLC*, 221 Or. App. 493, 498 (2008).

In February 2015, Murphy filed a lawsuit alleging that an employee of the United States had defamed him to multiple people by telling them that Murphy had

performed unauthorized medical procedures on her, including an unchaperoned Pap smear and gynecological exam, in November 2011. Murphy alleged that the defamatory statements had been communicated throughout the general medical community, been published in a statewide newspaper, and had caused harm to his reputation. Murphy alleged that the employee told many individuals about the incident and continued to tell people even after she was warned not to by her superiors. In May 2015, the United States District Court for the District of Oregon dismissed the action for failure to prosecute.

In February 2016, Murphy filed the instant case, asserting claims for defamation against the same employee regarding the same November 2011 medical procedures. Murphy alleged that the employee had made statements to multiple third parties and that she may have made defamatory remarks to as many as 50 other persons. The United States District Court for the District of Oregon dismissed this case on res judicata grounds.

The district court's ruling was correct. The sweep of the defamation claim alleged in Murphy's first lawsuit is broad enough to encompass the claims made in Murphy's current lawsuit. The underlying conduct at issue in both of these suits is the same: they both concern defamatory statements surrounding the November 2011 medical procedures. Murphy argues that the second lawsuit relies on new defamatory statements that happened later and are completely separate from those

alleged in the first lawsuit. However, Murphy discovered these “new” statements through reading the employee’s Letter of Reprimand, which was referenced in Murphy’s first complaint. Thus, Murphy was aware of the document and could have taken steps to procure it and litigate these “new” defamatory statements in his first action. Accordingly, Murphy’s current lawsuit is barred under claim preclusion.

AFFIRMED.